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IN THE

Supreme Court of the United States

October Term, 1944

WOODROW WILSON TILGHMAN, *Petitioner*

VERSUS

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND SUPPORTING BRIEF

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PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable The Supreme Court of the United States:

Now comes Woodrow Wilson Tilghman, hereinafter called petitioner, and petitioning for writ of certiorari to the United States Circuit Court of Appeals, for the Fifth Circuit, respectfully shows:

STATEMENT OF THE CASE

On May 8, 1944, an indictment in two counts was returned against petitioner to the District Court of the United States for the Northern District of Texas, charging him with what is commonly known as the Mann White Slave Act, Section 398 of Title 18 of the United States Code Annotated. The indictment charged that he transported Bernice Louise Williams from Oklahoma City, Oklahoma, to the City of Dallas, Texas, for immoral purposes, to-wit, prostitution, on January 10, 1944, in the first count. The second count charges the transportation of the said Bernice Louise Williams from Oklahoma City, Oklahoma, to Dallas, Texas, on or about February 19, 1944, for the same purpose (Tr. 1 and 2).

On May 11, 1944, the cause went to trial before a jury, and at the conclusion of the Government's case petitioner moved the court for an instructed verdict of not guilty, which was overruled (Tr. 93).

Thereupon, and on May 12, 1944, the court submitted both counts of the indictment to the jury (charge of the court, Tr. 165-170). The jury returned into court the following verdict:

> "We, the jury, find the defendant, Woodrow Wilson Tilghman not guilty on the first count. Guilty on the second count."

The court thereupon rendered judgment on said verdict, sentencing petitioner to imprisonment for a term of five

years (Tr. 5). Petitioner seasonably filed his notice of appeal to the United States Circuit Court of Appeals for the Fifth Circuit, in which notice he set forth the grounds on which the appeal was predicated, one of which ns the error of the court in refusing to instruct the jury to return a verdict of not guilty (Tr. 13, 14 and 15). The petitioner perfected his appeal, and on the 18th day of December, 1944, the United States Circuit Court of Appeals in all things affirmed the action of the court below (Appendix A).

Thereupon, and in time allowed, he filed his petition for rehearing, which was overruled without written opinion on January 22, 1945.

QUESTIONS PRESENTED

1.

Whether the court erred in overruling this petitioner's motion for an instructed verdict of not guilty on account of the insufficiency of the evidence to sustain a conviction.

2.

Whether the court erred in passing sentence upon petitioner under the second count of the indictment, because the testimony adduced upon the trial was not sufficient to support the verdict of the jury under said count.

STATEMENT AS TO THE JURISDICTION

This case originated in the District Court of the United States for the Northern District of Texas, at Dallas. Upon conviction of petitioner and sentence of the court, he duly appealed to the United States Circuit Court of Appeals for the Fifth Circuit. That court in all things affirmed the court below on the 18th day of December, 1944 (Appendix A). He seasonably filed his petition for rehearing, which was overruled January 22, 1945, without written opinion.

Jurisdiction of this case is conferred upon the Supreme Court of the United States by Section 347-a, U. S. C. A., Title 28, and by subsection 3 of paragraph 5(b) of Rule 38, Court Rules of the Supreme Court of the United States, in that the United States Circuit Court of Appeals for the Fifth Circuit decided an important question in conflict with the rule of well established decisions of the Supreme Court of the United States, and particularly in conflict with:

Mortenson v. United States, 64 Sup. Ct. 1038, 88 Law Ed. .....;

United States v. Reginell, 133 Fed. (2d) 595 (certiorari denied 63 Sup. Ct. 856, 318 U. S. 783, 87 Law Ed. 1150; rehearing denied 63 Sup. Ct. 1037, 319 U. S. 780, 87 Law Ed. 1725);

Shama v. United States, 94 Fed. (2d) 1 (certiorari denied 58 Sup. Ct. 1037, 304 U. S. 568; 82 Law Ed. 1533);

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Pine v. United States, 135 Fed. (2d) 353 (certiorari denied 64 Sup. Ct. 40, 320 U. S. 740, 88 Law Ed. .....).

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

The errors here assigned, the failure of the trial court to instruct a verdict of not guilty as to both counts, and the imposition of sentence on the second count, were errors of such nature as to vitally affect the fundamental rights of petitioner, in that the evidence was wholly insufficient to go to the jury, and the action of the jury in finding petitioner guilty on the second count and the trial court's sentence based thereon was without substantial evidence sufficient to support such action and plainly an error affecting the fundamental rights of petitioner. The action of the Circuit Court of Appeals in affirming this cause was error, fundamentally affecting the rights of petitioner, and in affirming the cause that court rendered an opinion in conflict with the rule of well established decisions of this Honorable Court, and particularly in conflict with:

Mortenson v. United States, 64 Sup. Ct. 1038, 88 Law Ed. .....;

United States v. Reginell, 133 Fed. (2d) 595 (certiorari denied 63 Sup. Ct. 856, 318 U. S. 783, 87 Law Ed. 1150; rehearing denied 63 Sup. Ct. 1037, 319 U. S. 780, 87 Law Ed. 1725);

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Pine v. United States, 135 Fed. (2d) 353 (certiorari denied 64 Sup. Ct. 40, 320 U. S. 740, 88 Law Ed. .....).

WHEREFORE, your petitioner respectfully prays that writ of certiorari issue to the Honorable The United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify to this court for its review and determination on a day certain a full and complete transcript of the record and proceedings in the cause numbered and entitled on its docket: No. 11,060, Woodrow Wilson Tilghman, Appellant, versus United States of America, Appellee, and that the judgment of the Circuit Court of Appeals and that of the trial court be reversed

and the cause remanded, and for such other orders as may be by this Honorable Court deemed just and proper.

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